



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,750	01/28/2000	Purnendu Shekhar Ojha	NEXTAG-00308	2623
28960 7590 12/13/2007 HAVERSTOCK & OWENS LLP 162 N WOLFE ROAD SUNNYVALE, CA 94086			EXAMINER POND, ROBERT M	
			ART UNIT 3625	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	09/493,750		OJHA ET AL.	
	Examiner		Art Unit	
	Robert M. Pond		3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 6-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/26/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The Applicants amended independent claims 1, 25, 26, and 27. All pending claims (1, 4 and 6-31) were examined in this final office action necessitated by amendment.

Response to Arguments

Applicant's arguments filed 29 September 2007 have been fully considered but they are not persuasive. The subject matter added to the independent claims pertains to opening up participation to any interested third-party over a wide area network. This is in contrast with cited prior art requiring registration of sellers and/or knowledge of participating business entities. The Examiner's position is open versus a more restricted participation is a business control decision driven by design incentives or market forces.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

- 1. Claims 1, 4, 6, and 12-31 are rejected under 35 USC 103(a) as being unpatentable over Walker (US 6,754,636, incorporating by reference Walker**

US 5,794,207, hereinafter “Walker ‘207”) in view of Walker (US 6,332,129, hereinafter “Walker ‘129).

Walker teaches a comparison shopping system and method that allows a buyer (i.e. a first party) to submit product information with a desired bid price to a remotely connected purchasing system. Based on the buyer offer information, the purchasing system selects a particular product (such as a manufacturer and model number) from a plurality of possible products from a plurality of sellers (i.e. second parties), and presents products from one or more sellers that meet the buyer's criteria (see at least abstract; Fig. 1A and 1B; col. 7, lines 32-47). Walker teaches subsidies being provided by a party- a manufacturer (i.e. a third party to a retailer acting as the seller), the purchasing system (i.e. a third-party), a retailer (i.e. a third-party), and by example a credit card company (see at least col. 7, lines 43-47; col. 8, lines 4-30; col. 30, lines 45). Walker further discloses:

- Providing information relating to a transaction between a first party and a second party to a third party via the wide area network: first, second, and third parties are connected to the Internet or wide area networks using the Web and using various computing and communication devices (see at least Figs. 1A and 1B; col. 5, lines 1-17; col. 6, line 66 through col. 7, line 24). third-parties (e.g. purchasing system taking action to close a deal between buyer and seller; manufacturer taking action to close a deal between a buyer and retailer; credit card company taking action to close a deal between a buyer and seller); fourth-party or another party (e.g. credit

card company taking action to close a deal between a buyer and a seller being managed by the purchasing system (see at least col. 7, lines 48-61; col. 8, lines 15-25).

- enabling the third party to facilitate consummation of the transaction between the first and second parties by transmitting a counteroffer or an acceptance from the third party via the wide area network, and enabling the third party to cover at least part of a first difference between the first bid price and the first ask price. Counteroffer to provide \$50 subsidy by a third party (e.g. credit card company) if buyer agrees to submit a credit card application (see col. 8, lines 19-30); purchasing system (i.e. third-party) can consummate the deal between a buyer making an offer (i.e. bid) and seller's price (i.e. ask price). When determining whether to accept a buyer's offer for a given product, the purchasing system may determine the subsidy amount provided by the manufacturer for the product (see at least col. 37, lines 43-62); secondary offer sent to seller (see at least Fig. 26C; col. 31, lines 21-30).

Walker teaches all the above as noted under the 103(a) rejection and teaches supplemental pricing information provided by a third-party or fourth party (i.e. subsidy) to close the deal between and buyer and a seller. Walker appears to describing supplemental pricing information that is pre-arranged or pre-determine prior to buyer-seller offer-counteroffers. Although Walker does not mention enabling the third party to dynamically

facilitate consummation of the transaction between the first and second parties by transmitting a counteroffer or an acceptance from the third party via the wide area network after receiving the first bid price and the first ask price. Walker in combination with Walker '129 teaches and suggests the claimed invention. Walker '129 teaches a method of subsidizing offers to make low consumers' offers acceptable before the offers are rejected. For example, if a consumer's offer of \$100 for an airline ticket through the priceline.com system is low in comparison to the available fare of \$125, the CPO Management System (i.e. purchasing system) will make such a determination and apply a subsidy amount of \$25 to the offer to make it more likely to be accepted by a seller (see at least col. 3, lines 3-10). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system and method of Walker to implement a dynamic implementation of subsidies to close deals between a buyer and seller as taught by Walker '129, because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.* Adapting to include a third-party increase the chances a deal will be closed.

Walker and Walker '129 teach all the above as noted under the 103(a) rejection and further teach i) the use of a wide area network, the Internet

or other networks to conduct business and ii) registered participants.

Although Walker and Walker '129 do not mention wherein the wide area network is configured to allow any interested entity to participate in the transaction as the third party, the claim would have been obvious because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.* Opening up to any interested third-party versus requiring registration or knowledge of participating business entities is a business control decision.

- Notifying the second party of the counteroffer transmitted to the first party:
seller receives offers from the purchasing system and communications offer acceptances/rejections. First party and second party who eventually accept an offer are notified (see at least col. 14, lines 16-26); counteroffer embodiments (207': see at least col. 22, lines 39 through col. 23, line18).
- Notifying the second party of the acceptance transmitted to the first party:
seller receives offers from the purchasing system and communications offer acceptances/rejections. First party and second party who eventually accept an offer are notified (see at least col. 14, lines 16-26); counteroffer embodiment with acceptance (207': see at least col. 22, lines 39 through col. 23, line18).

- Filtering: purchasing system applies business rules to filter bids based on at least one criterion (e.g. location of buyer) (see at least col. 11, lines 52-67); minimum acceptable price range by seller (207': see at least col. 23, lines 45-59).
- Second bid/second ask price: counteroffer embodiments (207': see at least col. 22, lines 39 through col. 23, line 18).
- Business rules and criteria: purchasing system automatically applies rules associated with second party; response options (see at least col. 14, lines 38-58); waiting a predetermined time period (e.g. discounting a product as it nears its expiration period) (see at least col. 12, line 5); sending offer data to a seller on a periodic basis (see at least col. 13, lines 44-50); implementing business protocol (i.e. rules that govern participation) (207': see at least col. 28, line 18 through col. 30, line 15); processing a seller's request using a minimum price range set by seller (207': see at least col. 23, lines 45-59).
- Mutually exclusive bid groups: offers sent to group of sellers within a specific subject area (207': see at least col. 18, lines 28-33).
- Computer program product: Inherent in Walker '207 are the structures necessary to permit a computer program product to execute the computer instructions necessary to function as a computerized reservation service.

Pertaining to claim 25

Rejection of claim 25 is based on similar rationale as noted above.

- 2. Claims 7-10 are rejected under 35 USC 103(a) as being unpatentable over Walker (US 6,754,636 which incorporates by reference Walker US 5,794,207 hereinafter referred to as "Walker '207") and Walker '129 (US 6,332,129), further in view of Chelliah (US 5,710,887).**

Walker and Walker '129 teach all the above as noted under the 103(a) rejection and further teach a) buyers, sellers, and retailers accessing a web server-based purchasing site over the Internet (Walker '207), b) using a browser application to submit offers/counteroffers and accept offers (Walker '207), and c) a third party offering subsidies to facilitate sales (Walker '636), but do not mention transmitting a web page to the third party, an entry in the web page corresponding to the transaction between the first and second parties. Chelliah teaches a system and method of a buyer interacting with multiple storefronts by accessing a remote central electronic mall server using a web browser. Chelliah teaches various business rules used to provide subsidies to customers to facilitate sales, a third-party monitoring the buyer's activity on a seller's electronic storefront using a web-based dashboard application, and teaches the third-party offering subsidies (i.e. incentives) to increase sales for the electronic store front. Chelliah further teaches using active objects such as icons, buttons, and links for selection purposes (see at least col. 6, lines 37-44; col. 23, line 48 through col. 24, line 42). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Walker and

Walker '129 to implement a web page dashboard with an active objects as taught by Chelliah, because the design incentives or market forces provided a reason to make an adaptation, and the invention resulted from application of the prior knowledge in a predictable manner. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.* Providing a third-party with an interactive user interface facilitate sales.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert M. Pond
Primary Examiner
December 7, 2007